

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

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D. MARK JONES, CLERK

DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	Case No. 1:10cr00012 BCW
Plaintiff,	:	STATEMENT BY DEFENDANT IN
vs.	:	ADVANCE OF PLEA OF GUILTY
LOGAN CITY MUNICIPAL	:	ACCORDING TO FED.R.CRIM.P.
CORPORATION,	:	11(c)(1)(C)
Defendant.	:	Magistrate Judge Brooke C. Wells

As Logan City Attorney acting on behalf of Logan City Municipal Corporation (LCMC), I, Kymber Housley, hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights:

1. As part of this agreement with the United States, LCMC intends to plead guilty to Count I of the Misdemeanor Information. LCMC understands the charge and what the government is required to prove in order to convict it. The elements of Count I are: (1) a person, (2) negligently discharged, (3) a pollutant to Waters of the United States, (4) without a permit in violation of 33 U.S.C. § 1319(c)(1)(A), 33 U.S.C. § 1311(a), and 18 U.S.C. § 2(b).

2. I know that the maximum possible penalty provided by law for Count I of the Information, a violation of 33 U.S.C. § 1319(c)(1)(A) & 33 U.S.C. § 1311(a), for a corporation/municipality is a fine of \$200,000. Additionally, I know the court is required to impose an assessment in the amount of \$25 for each offense of conviction, pursuant to 18 U.S.C. § 3013.

3. I know that the sentencing procedures in this case and the ultimate sentence will be determined pursuant to 18 U.S.C. § 3553(a), and that the Court must consider, but is not bound by, the United States Sentencing Guidelines, in determining LCMC's sentence. I also know that the final calculation of LCMC's sentence by the Court may differ from any calculation the United States or LCMC may have made, and LCMC will

not be able to withdraw its plea if this occurs. However, because LCMC's plea of guilty is being entered pursuant to Fed.R.Crim.P. 11(c)(1)(C), as explained below, I know that LCMC will be able to withdraw its plea if the Court does not agree to the Rule 11(c)(1)(C) agreement.

4. I know that LCMC can be represented by an attorney at every stage of the proceeding, and I know that if LCMC cannot afford an attorney, one will be appointed to represent it.

5. I know that LCMC has a right to plead "Not Guilty," and I know that if LCMC does plead "Not Guilty," LCMC can have a trial.

6. I know that LCMC has a right to a trial by jury, and I know that if LCMC stands trial by a jury:

- a. LCMC has a right to the assistance of counsel at every stage of the proceeding.
- b. LCMC through its counsel has a right to see and observe the witnesses who testify against it.
- c. LCMC's attorney can cross-examine all witnesses who testify against it.
- d. LCMC through its counsel can call witnesses to testify at trial, and can obtain subpoenas to require the attendance and testimony of those witnesses. If LCMC cannot afford to pay for the appearance of a witness and mileage fees, the government will pay them.
- e. LCMC cannot be forced to incriminate itself.
- f. The government must prove each and every element of the offense charged against LCMC beyond a reasonable doubt.
- g. It requires a unanimous verdict of a jury to convict LCMC.
- h. If LCMC were to be convicted, LCMC could appeal, and if LCMC could not afford to appeal, the government would pay the costs of the appeal, including the services of appointed counsel.

7. If LCMC pleads guilty, it will not have a trial of any kind.

8. (a) I know that 18 U.S.C. § 3742(a) sets forth the circumstances under which LCMC may appeal its sentence. However, fully understanding LCMC's right to appeal its sentence, and in consideration of the concessions and/or commitments made by the United States in this plea

agreement, I knowingly, voluntarily and expressly waive LCMC's right to appeal.

(b) LCMC also knowingly, voluntarily, and expressly waives its right to challenge its sentence, and the manner in which the sentence is determined, in any collateral review motion, writ or other procedure, including but not limited to a motion brought under 28 U.S.C. § 2255;

9. I know that 18 U.S.C. § 3742(b) sets forth the circumstances under which the United States may appeal LCMC's sentence.

10. I know that under a plea of guilty the judge may ask counsel of LCMC questions about the offense.

11. I stipulate and agree that the following facts accurately describe LCMC's conduct. These facts provide a basis for the Court to accept my guilty plea and for calculating the sentence in LCMC's case:

On May 10, 2005, Randall Rex Cook was acting as the Landfill Manager at the Logan City Landfill, a landfill in Cache County, Utah owned and operated by Logan City Municipal Corporation. Cook became aware that due to a heavy rainfall at the landfill, water mixed with pollutants from the garbage in the landfill had accumulated in a ditch running alongside a road at the landfill. In an effort to clear the ditch, Cook pumped it through a culvert across the road where it flowed into a grated drain and ultimately into Cutler Reservoir which is considered Waters of the United States. In doing so, Logan City Municipal Landfill, Cook's employer, acted with criminal negligence in the discharge of a pollutant to Waters of the United States.

12. The only terms and conditions pertaining to this plea agreement between the defendant and the United States are as follows:

A. The defendant agrees:

- (1) It will plead guilty to Count I of the Information;
- (2) To a Fed.R.Crim.P. 11(C)(1)(c) plea as set forth in C herein.

B. The United States agrees:

- (1) To a Fed.R.Crim.P. 11(C)(1)(c) plea as set forth in C herein.


- C. The defendant and the United States agree, pursuant to Fed.R.Crim.P. 11(c)(1)(C), to recommend that the sentence imposed by the Court will be a \$10,000 fine. Defendant understands that if the Court refuses to impose the foregoing sentence, the defendant will have the right to withdraw the plea of guilty.

* * * *

LCMC makes the following representations to the Court:


1. This Statement in Advance contains all terms of the agreements between LCMC and the government; if there are exceptions, the Court will be specifically advised, on the record, at the time of its guilty plea of the additional terms. LCMC understands the government and LCMC cannot have terms of this plea agreements that are not disclosed to the Court.
2. No one has made threats, promises, or representations to LCMC that have caused LCMC to plead guilty.
3. LCMC's decision to enter this plea was made after full and careful thought; with the advice of counsel; and with a full understanding of its rights, the facts and circumstances of the case and the consequences of the plea.
4. LCMC has no reservations concerning the plea.
5. LCMC understands and agrees to all of the above. I know that LCMC is free to change or delete anything contained in this statement. LCMC does not wish to make changes to this agreement because it agrees with the terms and all of the statements are correct.

DATED this 23 day of February, 2010.


Acting for and on behalf of Logan City
Municipal Corporation
Defendant

I certify that I have discussed this statement with the defendant, that I have fully explained LCMC's rights to LCMC, and I have assisted LCMC in completing this form. I believe that LCMC is knowingly and voluntarily entering the plea with full knowledge of LCMC's legal rights and that there is a factual basis for the plea.


DATED this 23 day of February, 2010.


KYMBER HOUSLEY
Attorney for Defendant

I represent that all terms of the plea agreement between the defendant and the government have been, or will be at the plea hearing, disclosed to the Court, and there are no off-the-record agreements between the defendant and the United States.

DATED this 23rd day of February, 2010.

CARLIE CHRISTENSEN
Acting United States Attorney


RICHARD LAMBERT
Assistant United States Attorney